



December 21, 2001

Ms. Linda Cloud
Executive Director
Texas Lottery Commission
P.O. Box 16630
Austin, Texas 7861-6630

OR2001-6051

Dear Ms. Cloud:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 156712.

The Texas Lottery Commission (the "commission") received a request for all documents related to case numbers B220000114, B220000149, B220000148, and B220000110. You claim that the requested information is excepted from disclosure under sections 552.101, 552.107, 552.108, 552.110, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.¹ We have also considered comments submitted to this office by the attorney representing several third parties whose interests may be affected by the request. Gov't Code §552.304.

You argue that the submitted information in Exhibits B - H is excepted from public disclosure under section 552.108 of the Government Code. Section 552.108(a) excepts from disclosure

[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime ... if:

¹We note that the request indicates that the requestor previously requested the information at issue. The commission advises this office, however, that the requestor withdrew the earlier request. Based on this representation, we find that the commission timely complied with section 552.301 of the Government Code.

(1) release of the information would interfere with the detection, investigation, or prosecution of crime[.]

Gov't Code § 552.108(a)(1). Generally, a governmental body claiming section 552.108(a)(1) must reasonably explain, if the information does not supply the explanation on its face, how and why the release of the requested information would interfere with law enforcement. *See* Gov't Code §§ 552.108(a)(1), (b)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). Based on your arguments and our review of the information, we understand that the information in Exhibits B - H that you seek to withhold under section 552.108 relates to pending criminal investigations or investigations that are pending review for possible enforcement actions. Therefore, we conclude that the release of this information would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). Accordingly, you may withhold Exhibits B - H under section 552.108(a)(1).²

You assert that the submitted information in Exhibit I is excepted from disclosure under section 552.107. Section 552.107(1) of the Government Code protects information coming within the attorney-client privilege³. In instances where an attorney represents a governmental entity, the attorney-client privilege protects only an attorney's legal advice and the client's confidences made to the attorney. *See Open Records Decision No. 574* (1990). Accordingly, these two classes of information are the only information contained in the records at issue that may be withheld pursuant to the attorney-client privilege.

You contend that the information contained in Exhibit I consists of a memorandum drafted by the commission's attorney for the purpose of providing legal analysis and advice. Based on your argument and our review of the submitted document, we agree that the document in question reflects an attorney's legal advice and may therefore be withheld under section 552.107(1). We have marked the document that may be withheld under section 552.107(1).

In summary, the commission may withhold Exhibits B - H from public disclosure under section 552.108. The information in Exhibit I may be withheld under section 552.107.

²You appear to argue the applicability of section 552.108(a)(2) in stating the investigations "have not resulted" in a conviction or deferred adjudication. *See* Gov't Code § 552.108(a)(2). We emphasize that this provision is inapplicable to pending investigations. It may apply only where the matter reached a final result other than conviction or deferred adjudication.

³You also argue the attorney-client privilege under section 552.101 of the Government Code. This office has concluded, however, that section 552.101 does not encompass discovery privileges in general. *See Open Records Decision No. 575* (1990).

Because sections 552.107(1) and 552.108 are dispositive, we need not reach the remaining arguments.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for

contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Cindy Nettles". The signature is fluid and cursive, with the first name "Cindy" written in a larger, more prominent script than the last name "Nettles".

Cindy Nettles
Assistant Attorney General
Open Records Division

CN/seg

Ref: ID# 156712

Enc. Submitted documents

c: Mr. Brian O'Toole
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(w/o enclosures)